

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUNRISE RENTALS ENTERPRISES;)
et al.,)
Plaintiffs,)
v.) CASE NO.: 1:10-cv-00261-WS-M
BP PLC; *et al.*,)
Defendants.)

MOTION TO DISMISS

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), BP America Inc. and BP Products North America Inc. (collectively “BP Defendants”) hereby move the Court to dismiss the Complaint and each and every count and claim therein alleged against the BP Defendants. As grounds for this motion, the BP Defendants state:

1. The Oil Pollution Act of 1990 (OPA), 33 U.S.C. §2701, *et. seq.* displaces Plaintiffs’ negligence, wantonness, nuisance, and strict liability claims.
2. Absent from Plaintiffs’ Complaint is any allegation that they have submitted their claims to BP through the OPA-mandated claims process that BP is carrying out, which is a mandatory condition precedent under the OPA to filing a lawsuit against BP for recovery of damages related to the oil spill. 33 U.S.C. § 2713(a), (c).

3. Even if OPA had not displaced Plaintiffs' claims, they would still be barred by the economic loss rule of *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303, 309 (1927), or Louisiana state law principles, *see PPG Indus., Inc. v. Bean Dredging*, 447 So. 2d 1058, 1062 (La. 1984), made part of the federal law governing the Outer Continental Shelf.

4. In accordance with Local Rule 7.1, the BP Defendants submit a separate Memorandum of Law in support of this motion, which is adopted and incorporated by reference as part of this motion.

WHEREFORE, the BP Defendants respectfully request that the Court enter an order dismissing Plaintiffs' complaint and each and every count and claim therein alleged against the BP Defendants.

s/ William H. Brooks

John M. Johnson (JOHNJ7318)

Adam K. Peck (PECKA0851)

William H. Brooks (BROOW3330)

Marchello D. Gray (GRAYM6384)

LIGHTFOOT, FRANKLIN & WHITE, L.L.C.

400 North 20th Street

Birmingham, Alabama 35203

Telephone: (205) 581-0700

Facsimile: (205) 581-0799

JJohnson@lightfootlaw.com

APeck@lightfootlaw.com

Wbrooks@lightfootlaw.com

MGray@lightfootlaw.com

Attorneys for Defendants
BP America Inc. and BP Products North
America Inc.

OF COUNSEL:

Richard C. Godfrey, P.C.

John T. Hickey, Jr., P.C.

J. Andrew Langan, P.C.

KIRKLAND & ELLIS, LLP

300 North Lasalle Street

Chicago, IL 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

RGodfrey@kirkland.com

JHickey@kirkland.com

ALangan@kirkland.com

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

Jere L. Beasley, Esq.
Rhon E. Jones, Esq.
David B. Byrne, III, Esq.
John E. Tomlinson, Esq.
Christopher D. Boutwell, Esq.
J. Parker Miller, Esq.
Anna Brantley Fry, Esq.
**BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.**
218 Commerce Street
Montgomery, AL 36104

John N. Leach, Esq.
Joseph P. H. Babington, Esq.
Russell C. Buffkin. Esq.
**HELMsing, LEACH, HERLONG,
NEWMAN & ROUSE, P.C.**
Post Office Box 2767
Mobile AL 36652

Donald E. Godwin, Esq.
Bruce W. Bowman, Jr., Esq.
Jenny L. Martinez, Esq.
Floyd R. Hartley, Jr., Esq.
Gavin E. Hill, Esq.
GODWIN RONQUILLO, P.C.
1201 Elm Street, Suite 1700
Dallas, TX 75270

Robert Alan York, Esq.
GODWIN RONQUILLO, P.C.
1331 Lamar, Suite 1665
4 Houston Center
Houston, TX 77010

A. Danner Frazer , Jr., Esq.
Robert J. Mullican, Esq.
**FRAZER, GREENE, UPCHURCH &
BAKER, LLC**
P. O. Box 1686
Mobile, AL 36633

David J. Beck, Esq.
BECK, REDDEN & SECREST, LLP
One Houston Center
1221 McKinney St., Ste 4500
Houston, TX 77010

s/ William H. Brooks
Of Counsel